

REMARKS

With entry of this amendment, claims 39, 44, 47-52, and 54-89 are pending in the application. By this Amendment, claims 1-28, 38, 40-43, 45-46, and 53 have been cancelled, without prejudice, to advance the application to allowance. Also by this Amendment, claims 39 and 47-50 have been amended, and new claims 55-89 have been added. All of the amendments herein, and the attendant cancellation and withdrawal of subject matter from the claims, are presented without prejudice to advance the application to issuance, and Applicant reserves the right to pursue all such cancelled and withdrawn subject matter in one or more related application(s). All of the amendments herein are supported by the disclosure, and no new matter has been added to the application. Entry of the foregoing amendments and allowance of the application is respectfully requested.

Drawings

The drawings are objected to under 37 CFR 1.83(a) because they allegedly fail to show the elliptical cross section as described in the specification (page 19) and recited in claim 28. Applicant respectfully submits that the drawings adequately convey the structural detail of this aspect of the invention, and that further detail in the form of a cross-sectional rendering is not required under the relevant sections of the Patent Act, as construed under the administrative provision cited by the Examiner (MPEP § 608.02(d)). Nonetheless, the drawing rejection and proposed correction are rendered moot on the basis that claim 28 is cancelled herein, without prejudice. Applicant reserves the right to reintroduce this subject matter into the application on further consideration, and/or to pursue the subject matter thus withdrawn in a related application.

Specification

The disclosure is objected on the basis that it is allegedly unclear from the specification “how the radial axis is defined or measured according to applicant (from what point of or from the shell to what point of or from the shell?)”. The Office further alleges that “it is unclear how the first or second radius is defined or measured according to applicant (from what point of or from the shell to what point of or from the shell?)”.

Double Patenting

Applicant notes that the prior rejection for alleged obviousness-type double patenting over Applicant's priority application, USSN 10/187,008 (now patented as USPN 6,969,364), in view of Taylor et al. (USPN 5,797,864) has been withdrawn as obviated by Applicant's filing of a Terminal disclaimer over the '008 application in the previous Response.

Patentability Under 35 USC § 112

Claims 7, 17-20, and 39 are rejected under 35 U.S.C. 112, second paragraph, as being allegedly indefinite.

Patentability Under 35 USC § 102 and 35 USC § 103

Claims 1-16, 20-22, 38-51, 53, and 54 are rejected under 35 U.S.C. 102(b) as allegedly anticipated by Bleau et al (5,792,086). Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Bleau et al (5,792,086) in view of Bledsoe. Claims 23-28 are rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Bleau et al in view of Tailor et al (5,277,698), or Brooks et al, or Cadoret. Claims 15 and 52 are rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Bleau et al in view of Taylor (5,797,864).

Claims 17 and 20 are objected to as being dependent upon a rejected base claim, but are indicated by the Office to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants do not accede to the foregoing objections and rejections, but respectfully submit that the objections and rejections are rendered moot by the amendments to the claims herein. In particular, without addressing the merits of the foregoing stated grounds for rejection and objection, Applicant notes that independent claim 39 has been amended herein to correspond closely to the subject matter of allowed claim 1 from the parent application, granted as U.S. Patent No. 6,969,364, with the exception that the present invention is directed to a novel osteoarthritis brace

configuration comprising a unilateral hinge, rather than the brace of the '364 patent which employs both lateral and medial hinges. Nonetheless, patentably distinct features of the novel bilateral hinge design embodied in the claims of the parent, '364 patent are employed within the hinge construction of the unilateral osteoarthritis hinge described and claimed in the instant application. On this basis, the rejection of claim 39, and of the original, previously presented, and currently amended claims, is believed to be obviated. Similarly, new independent claim 68 and its respective dependent claims likewise are believed patentable in view of the foregoing, consistent with the Office's prior consideration and positive disposition of claims in the parent, '364 patent.

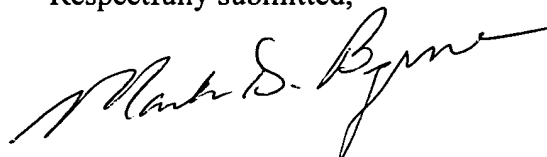
CONCLUSION

In view of the foregoing, Applicant believes that all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes that a telephone conference would expedite prosecution of this application, please telephone the undersigned at (206) 381-3300.

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Respectfully submitted,



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